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Date: 09.10.2025

CESTAT Mumbai Sets Aside Confiscation and Duty Recovery in Naphthalene Import Dispute

This Article has been written by Shri Ravi Shekhar Jha, Advocate based in New Delhi. The views expressed are based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

In a significant ruling, the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Mumbai, has delivered a judgment that underscores the importance of adhering to legal principles in customs enforcement. The case involved appeals filed by M/s LRC Speciality Chemicals Pvt Ltd, M/s Silicon Carbide Grinding Mills Pvt Ltd, and Appellant, challenging the confiscation of imported naphthalene and the subsequent recovery of duties foregone. The tribunal's decision, pronounced on October 1, 2025, has set a precedent for similar cases in the future.

Background of the Case

The appellants had imported naphthalene under the Duty Exemption Entitlement Certificate (DEEC) scheme of the Foreign Trade Policy (FTP) for manufacturing and exporting specific products. However, customs authorities alleged that portions of the imported goods were diverted for domestic use and transferred between the appellants, violating the conditions of the exemption notification issued under Section 25 of the Customs Act, 1962. This led to the confiscation of the goods under Section 111(o) of the Customs Act, 1962, and the imposition of fines and recovery of duties under Section 125 of the Act.

Key Arguments by the Appellants

The appellants contended that:

1. The alleged transfer of goods was incorrect, and stock validation did not cover the entire export obligation period.

2. The Directorate General of Foreign Trade (DGFT) had issued an Export Obligation Discharge Certificate (EODC), confirming the fulfillment of export obligations.

3. Customs authorities lacked jurisdiction to recover duties once the licensing authority had acknowledged the discharge of obligations.

4. Recovery under Section 125 of the Customs Act was not applicable in the absence of goods available for confiscation.

The appellants relied on landmark judgments, including *Titan Medical Systems Pvt Ltd v. Collector of Customs* and *Aditya Birla Nuvo Ltd v. Commissioner of Customs*, to support their arguments.

CESTAT's Observations and Ruling

The tribunal examined the jurisdiction for recovery under Section 125 of the Customs Act, 1962, and referred to judicial precedents that clarified the scope of recovery in cases of confiscation. It noted that:

- Once the licensing authority issues an EODC, customs authorities cannot challenge the fulfillment of export obligations.

- Non-availability of goods precludes confiscation and redemption, as established in previous rulings.

- The customs authorities lacked the legal basis to initiate recovery proceedings after the export obligations were discharged.

The tribunal concluded that the confiscation and recovery of duties foregone were without legal foundation. Consequently, the appeals were allowed, and the impugned orders were set aside.

Implications of the Judgment

This ruling reinforces the principle that customs authorities cannot override the decisions of licensing authorities once export obligations are certified as fulfilled. It also highlights the importance of adhering to established legal procedures in cases involving duty exemptions and confiscation. Businesses engaged in imports under duty exemption schemes can take solace in the fact that judicial scrutiny will protect them from arbitrary enforcement actions.

Conclusion

The CESTAT Mumbai's decision in this case is a victory for businesses navigating the complexities of customs regulations. It underscores the importance of legal safeguards and the role of judicial oversight in ensuring fair enforcement. As the tribunal rightly pointed out, once export obligations are discharged and certified, customs authorities must respect the licensing authority's decision. This landmark ruling will undoubtedly serve as a guiding precedent for similar cases in the future.

Source: CESTAT Mumbai

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CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 89313 OF 2014

[Arising out of Order-in-Appeal No: 2625 To 2627(GR.VIID)/2014(JNCH) /EXP-126 To 128 dated 19th June 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

LRC Speciality Chemicals Pvt Ltd
Plot No D/9-4, TTC MIDC Industrial Area
Kukshet Village Turbhe Navi Mumbai - 400 705 … ***Appellant***

versus

Commissioner of Customs (Exports)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 89314 OF 2014

[Arising out of Order-in-Appeal No: 2622 To 2624(GR.VIID)/2014(JNCH) /EXP-123 To 125 dated 19th June 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Silicon Carbide Grinding Mills Pvt Ltd
W-11, TTC MIDC Industrial Area, Pawne Village Off
Thane-Belapur Road, Navi Mumbai - 400 705 … ***Appellant***

versus

Commissioner of Customs (Exports)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 89315 OF 2014

[Arising out of Order-in-Appeal No: 2625 To 2627 (GR.VIID)/2014(JNCH) /EXP-126 To 128 dated 19th June 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Silicon Carbide Grinding Mills Pvt Ltd
W-11, TTC MIDC Industrial Area, Pawne Village Off
Thane-Belapur Road, Navi Mumbai - 400 705 … ***Appellant***

versus

Commissioner of Customs (Exports)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 89316 OF 2014

[Arising out of Order-in-Appeal No: 2622 To 2624(GR.VIID)/2014(JNCH) /EXP-123 To 125 dated 19th June 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

LRC Speciality Chemicals Pvt Ltd
Plot No D/9-4, TTC MIDC Industrial Area
Kukshet Village Turbhe Navi Mumbai - 400 705 … ***Appellant***

versus

Commissioner of Customs (Exports)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 89317 OF 2014

[Arising out of Order-in-Appeal No: 2625 To 2628(GR.VIID)/2014(JNCH) /EXP-126 To 128 dated 19th June 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

SV Jayshankar
LRC Speciality Chemicals Pvt Ltd
Plot No D/9-4, TTC MIDC Industrial Area
Kukshet Village Turbhe Navi Mumbai - 400 705 … ***Appellant***

versus

Commissioner of Customs (Exports)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 89318 OF 2014

[Arising out of Order-in-Appeal No: 2622 TO 2624(GR.VIID)/2014(JNCH) /EXP-123 To 125 dated 19th June 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

SV Jayshankar
Silicon Carbide Grinding Mills Pvt Ltd
W-11, TTC MIDC Industrial Area, Pawne Village Off
Thane-Belapur Road, Navi Mumbai - 400 705 … ***Appellant***

versus

Commissioner of Customs (Exports)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri Vinay S Sejpal, Advocate for the appellants

Shri Krishna Azad, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86398-86403/2025

DATE OF HEARING: 02/04/2025
DATE OF DECISION: 01/10/2025

PER: C J MATHEW

In this appeal of M/s LRC Speciality Chemicals Pvt Ltd, and joined in by M/s Silicon Carbide Grinding Mills Pvt Ltd and Shri SV

Jayshankar, Director also aggrieved by order[1] of Commissioner of Customs (Appeals), Mumbai – II rejecting their challenge to order of the original authority confiscating 1,48,246 kgs of 'naphthalene' valued at ₹ 47,09,120 under section 111(o) of Customs Act, 1962 and, while permitting redemption thereof under section 125 of Customs Act, 1962 on payment of fine of ₹ 5,00,000, quantified the duty foregone as ₹ 17,03,618 which, along with applicable interest, was to be recovered under section 125 of Customs Act, 1962 besides imposition of penalties under section 112 on all the three appellants, sustainability of detriments has been questioned on several mutually exclusive grounds of fact and law. Likewise, in the case of M/s Silicon Carbide Grinding Mills Pvt Ltd agaomst order[2] of Commissioner of Customs (Appeals), Mumbai – II rejecting their challenge to order of the original authority confiscating 1,00,000 kgs of 'naphthalene' valued at ₹ 27,75,466 under section 111(o) of Customs Act, 1962 and, while permitting redemption thereof under section 125 of Customs Act, 1962 on payment of fine of ₹ 3,00,000, quantified the duty foregone as ₹ 9,34,973 which, along with applicable interest, was to be recovered under section 125 of Customs Act, 1962.

2. The facts in brief are that M/s LRC Speciality Chemicals Pvt Ltd had, against advance licence obtained under 'duty exemption

[1] [order-in-appeal no. 2625 TO 2627(GR.VIID)/2014(JNCH) /EXP-126 To 128 dated 19th June 2014]
[2] [[order-in-appeal no.2622 TO 2624(GR.VIID)/2014(JNCH) /EXP-122 To 124 dated 19th June 2014]

entitlement certificate (DEEC)' scheme of the Foreign Trade Policy (FTP) imported 164100 kgs of 'naphthalene' for enabling manufacture and export of 143450 kgs and 374950 kgs of 'Indoliga GB powder' and 'Indoliga GV liquid' respectively; it was alleged that, of this, 43,280 kgs was transferred to M/s Silicon Carbide Grinding Mills Pvt Ltd and another 1,04,966 kgs been used in manufacture of goods cleared to the domestic market. M/s Silicon Carbide Grinding Mills Pvt Ltd had, against advance licence obtained under 'duty exemption entitlement certificate (DEEC)' scheme of the Foreign Trade Policy (FTP) imported 1,00,00 kgs of 'naphthalene' for enabling manufacture and export of goods; it was alleged that, of this, 52,400 kgs was transferred to M/s LRC Speciality Chemicals Pvt Ltd and another 47,600 kgs been used in manufacture of goods cleared to the domestic market. That, according to customs authorities, being in contravention of relevant exemption notification[3] issued under section 25 of Customs Act, 1962 and the relevant provisions in the Foreign Trade Policy, sufficed for recovery of duty foregone and other detriments.

3. Learned Counsel submitted that the impugned goods had neither been transferred as alleged in the notice nor had stock been ascertained for the entire period of export obligation to afford correct picture of consumption. It was contended that goods loaned to M/s Silicon Carbide Grinding Mills Pvt Ltd had been returned to them upon import

[3] [no. 51/2000-Cus dated 27th April 2000]

by the latter and that the limited stock found in the books for January 2001 to July 2001 did not cover the period of export obligation which would have reflected the flows. He further submitted that Directorate General of Foreign Trade (DGFT), had, on the basis of authentication of exports by jurisdictional customs authorities, accepted due fulfillment of obligation entailed upon 'duty free' imports and had issued 'export obligation discharge certificate (EODC)' owing to which it was not open to the customs authorities to invoke recovery. It is also submitted that recovery of duty, along with interest thereon, had not invoked section 28 of Customs Act, 1962 but by recourse to a conditional empowerment burdening owner of the imported goods claiming possession by redemption under section 125 of Customs Act, 1962 with obligation to discharge duties foregone at the time of import too.

4. Learned Counsel placed reliance on the decision of the Hon'ble Supreme Court in *Titan Medical Systems Pvt Ltd v. Collector of Customs, New Delhi [2003 (151) ELT 254 (SC),* of Hon'ble High Court of Karnataka in *Commissioner of Customs, Bangalore v. Aditya Birla Nuvo Ltd [2021 (378) ELT 42 (Kar.)],* and of the Hon'ble High Court of Bombay in *Autolite (India) Ltd v. Union of India [2003 (157) ELT 13 (Bom)]* in support of arguments about jurisdiction to recover duties after statutory discharge of obligations had been acknowledged by the licensing authority. That recovery by recourse limited to section 125

of Customs Act, 1962 had limited coverage and only upon availability of goods for confiscation was canvassed by placing reliance on the decision of the Hon'ble Supreme Court in *Commissioner of Customs (Import), Mumbai v. Jagdish Cancer & Research Centre [2001 (132) ELT 257 (SC),* in *Fortis Hospital Ltd v. Commissioner of Customs (Import) [2015 (318) ELT 551 (SC)]* and in *Navayuga Engineering Co Ltd v. Union of India [2024 (390) ELT 3 (SC)]*. It was further submitted, by placing reliance on the decision of the Hon'ble High Court of Bombay in *Commissioner of Customs (Import), Mumbai v. Finesse Creation Inc [2009 (248) ELT 122 (Bom)]* and in *Commissioner of Customs (Import), Mumbai v. Air India Ltd [2023 (386) ELT 236 (Bom.)]* and of the Hon'ble High Court of Punjab & Haryana in *Commissioner of Customs, Amritsar v. Raja Impex (P) Ltd [2008 (229) ELT 185 (P&H)]*, that non-availability of goods precluded confiscation and redemption thereof.

5. Before proceeding further, we are compelled to examine the jurisdiction for recovery under section 125 of Customs Act, 1962 which drew judicial sanction from the decision of the Hon'ble Supreme Court, in *re Jagdish Cancer & Research Centre*, thus

> *'11. Whenever an order confiscating the imported goods is passed, an option, as provided under sub-section (1) of Section 125 of the Customs Act, is to be given to the person to pay fine in lieu of the confiscation and on such an order being passed according to sub-section (2) of Section 125, the person "shall*

in addition be liable to any duty and charges payable in respect of such goods". A reading of sub-sections (1) and (2) of Section 125 together makes it clear that liability to pay duty arises under sub-section (2) in addition to the fine under sub-section (1). Therefore, where an order is passed for payment of customs duty along with an order of imposition of fine in lieu of confiscation of goods, it shall only be referable to sub-section (2) of Section 125 of the Customs Act. It would not attract Section 28(1) of the Customs Act which covers the cases of duty not levied, short levied or erroneously refunded etc. The order for payment of duty under Section 125 (2) would be an integral part of proceedings relating to confiscation and consequential orders thereon, on the ground as in this case that the importer had violated the conditions of notification subject to which exemption of goods was granted, without attracting the provisions of Section 28(1) of the Customs Act. A reference may beneficially be made to a decision of this Court reported in Mohan Meakins Ltd. v. Commissioner of Central Excise, Kochi, 2000 (115) E.L.T. 3 (S.C.) = (2000) 1 SCC 462 wherein it has been observed in Para 6 "….. Therefore, there is a mandatory requirement on the adjudicating officer before permitting the redemption of goods, firstly, to assess the market value of the goods and then to levy any duty or charge payable on such goods apart from the redemption fine that he intends to levy under sub-section (1) of that section." In this view of the matter the objection raised by the Centre that Section 28 of the Customs Act would be attracted is not sustainable.'

6. Since then, this declaration of law permitted recovery to be fastened on owner of goods as condition of redemption. Premising such recovery, absent invoking authority of section 28 of Customs Act, 1962 which, otherwise, is sole provision for recovery of duties not

paid/short-paid at the time of import, contingent upon assessment having been completed but duty thereof foregone then. On behalf of appellant, it has been canvassed that such recovery is not fastenable when the goods were not only not available for confiscation but also acknowledged to be so on record . We do agree. However, upon goods not being available for redemption, the appellant may well ignore the offer to exercise option of redemption which, by discharging the importer from attendant obligation to pay duties, erases any prejudice thenceforth. That is exercise of agency with consequence thereof attached to the importer. Such renunciation, if voluntary, precludes us from proceeding further.

7. Learned Authorized Representative submitted that the ascertainment of stocks of appellant had revealed the extent of utilization for domestic production and of transfer to another appellant herein which was in contravention of the provisions of the scheme as well as the notification permitting availment of exemption on import. He submitted that a clear case of diversion of the finished goods into the local market had been made out and that paragraph 7.4 of the Export and Import (EXIM) Policy 1997-2002, as well as condition at serial no. 3 of notification[4], had been breached owing to which the impugned goods were liable to confiscation and all other consequences thereon.

[4] [no.51/2000-Cus dated 27th April 2000]

8. It is the contention of the Learned Counsel that fulfilment of export obligation and issue of certification by the licensing authority terminates all cause of action insofar as availment of the said exemption is concerned. In *re Aditya Birla Nuvo Ltd* the Hon'ble High Court of Karnataka has held

> *'8. From perusal of clause 3.4 and 3.45 of export import policy 1997-2002, it is evident that licence holder is free to get in the material processed through not just supporting manufacturers specified in the licence but also through other job workers as imported goods and exported goods are properly accounted for. This requirement has been duly fulfilled by the respondent inasmuch as there has been a proper account of imported material as well as exported goods details of which were furnished to the officer which were duly accepted. Therefore, there is no violation of actual user condition.*
>
> *9. In the instant case, the licensing authority competent to grant licences allowed the respondent to import polyester/cotton blended fabrics without payment of duty against the export of men's shirts. The Directorate General of Foreign Trade has issued the advance licence for duty free import after due Notification that materials can be used for production of export goods. The respondent fulfilled the export obligations in respect of exporting men's full sleeve shirts of specified value, which was examined by Joint Director of Foreign Trade and Export Obligation Discharge Certificate (EODC) was issued. Thereafter, it is not open for the officers of the customs department to contend that the imported material cannot be used for manufacture of shirts and that respondent has not discharged its export obligation by*

violating the conditions of the exemption Notification. In this connection, reference may be made to decision of the Supreme Court in Titan Medical Systems supra.'

9. In *re Titan Medical Systems Pvt Ltd*, it has been held that

'13. As regards the contention that the appellants were not entitled to the benefit of the exemption notification as they had misrepresented to the licensing authority, it was fairly admitted that there was no requirement, for issuance of a licence, that an applicant set out the quantity or value of the indigenous components which would be used in the manufacture. Undoubtedly, while applying for a licence, the appellants set out the components they would use and their value. However, the value was only an estimate. It is not the respondents' case that the components were not used. The only case is that the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. To be noted that the licensing authority having taken no steps to cancel the licence. The licensing authority have not claimed that there was any misrepresentation. Once an advance licence was issued and not questioned by the licensing authority, the Customs authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf.'

and in *re Autolite (India) Ltd*, the Hon'ble High Court of Bombay had held that

'7. Having heard the Counsel on both the sides, we are of the opinion that the Customs authorities below were not justified in refusing to allow the duty free clearance of the goods on the ground that die steel imported by the petitioner is capital goods

and capital goods did not fall within the scope of the Notification No. 116/1988. Admittedly, under the advance licence issued, the petitioner was entitled for duty free import of die steel as a material required in the manufacture of export product. Once the Licensing Authority has accepted that die steel is a material required in the manufacture of the export product, it is not open to the Customs Authorities to go behind the licence and deny duty free clearance of the goods. The exemption Notification No. 116/1988, dated 30th March, 1988 specifically states that the materials that are required to be imported for the purpose of manufacture of resultant products shall include such items as are imported into India against the advance licence for subsequent exportation. In the instant case, the licence specifically states that the petitioner is entitled to import die steel as a material required for the manufacture of resultant products. The Apex Court in the case of Titan Medical Systems Pvt. Ltd. v. Collector of Customs reported in 2003 (151) ELT 254 (S.C.) has held that once an advance licence is issued and not questioned by the licensing authority, the Customs authorities cannot refuse exemption on an allegation that there was any misrepresentation. In the present case also, the licensing authorities have not found fault with the statement of the petitioner that the die steel is a material required in the manufacture of resultant product and have granted advance licence to the petitioner. Assuming that the licensing authorities have wrongly accepted the statement of the petitioner, so long as the licence is valid and subsisting the import of materials set out in the advance licence are liable to be cleared duty free, under Notification No. 116 of 1988 and the Customs authorities cannot deny duty free clearance of the materials set out in the licence. It is open to the Customs authorities to sit in appeal and hold that the licensing authorities have erroneously endorsed advance licence to

permit import of die steel as a material required in the manufacture of the resultant product. In this view of the matter, we are of the opinion that the impugned orders passed by the Customs authorities below cannot be sustained.'

10. Of more consequence is the initiating of proceedings which, from facts of discharge of export obligation as well as erroneous assumption about 'stock keeping', that has been questioned for lacking validation. We find that the catena of cases, cited by the appellant *supra,* precludes such jurisdiction vesting on the customs authorities once the obligation has ceased to subsist in the records of the licensing authority. Accordingly, without going into the other issues of stock validation and deployment of imported goods in detail, we hold that confiscation, and consequences, as affirmed in the impugned order and including recovery of duty foregone, are without basis of law owing to which the appeals are allowed.

(Order pronounced in the open court on 01/10/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*